



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 29 2005

REPLY TO THE ATTENTION OF
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David A. Piech
International Truck and Engine Corporation
4201 Winfield Road
P.O. Box 1488
Warrenville, IL 60555

Dear Mr. Piech:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves Indianapolis Casting Corporation (ICC), case docket no. CAA-05-2005-0059. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 29 2005.

Pursuant to paragraph 53 of the CAFO, ICC must pay the civil penalty on or before November 15, 2005. Your check must display the case docket number, CAA-05-2005-0059, and the billing document number, 054305032.

Please direct any questions regarding this case to Cynthia A. King, Associate Regional Counsel 312-886-6831.

Sincerely yours,

Randall Robinson, Acting Section Chief
MI/WI

Enclosure

3. Respondent is Indianapolis Casting Corporation, a corporation doing business in Indiana. Respondent is a wholly-owned subsidiary of International Truck and Engine Corporation

(International). For purposes of this Consent Order and Final Agreement, Respondent will be referred to as "International."

4. Under 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. International admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. International waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Each state must submit to the Administrator of U.S. EPA a plan for attaining and maintaining the National Ambient Air Quality Standards under Section 110 of the Act, 42 U.S.C. § 7410.

10. On March 3, 1978, pursuant to Section 107 of the Act, 42 U.S.C. § 7407, U.S. EPA designated Marion County, Indiana as nonattainment for ozone. 42 Fed. Reg. 8962 (March 3, 1978).

11. Effective June 30, 1979, the New Source Review regulations at 40 C.F.R. § 52.24 prohibited the construction or modification of major stationary sources in nonattainment areas if the emissions from that source would cause or contribute to concentrations of any pollutant for which the national ambient air quality standard is exceeded, unless the SIP met the requirements of Part D of the Act, 42 U.S.C. §§ 7501-7509.

12. 40 C.F.R. § 52.24(f)(4)(i)(a) defines a "major stationary source" as any stationary source of air pollutants which has the potential to emit 100 tons per year or more of any pollutant subject to regulation under the Act. Volatile organic compounds (VOCs) are subject to regulation under the Act.

13. On February 16, 1982, U.S. EPA approved, as part of the Indiana SIP, Indiana Air Pollution Control Board 19 (APC 19), which sets forth construction and operating permit requirements for sources of air emissions. APC 19 implements Part D of the Act, 42 U.S.C. §§ 7501-7509. 47 Fed. Reg. 6621 (February 16, 1982).

14. Section 2(a) of APC 19 states that "[a]ny person proposing to operate any existing facility which has the potential to emit 25 tons per year or more of any regulated

pollutant must comply with the requirements of Sections 4,5, and 6 of [APC 19]."

15. Section 2(b) of APC 19 states that "[a]ny person proposing to begin, after the promulgation of this regulation, construction, modification or reconstruction of any facility which will result in a potential increase of emissions of 25 tons per year or more of any regulated pollutant shall comply with the requirements of Sections 4 and 6 of this regulation."

16. Section 2(c) of APC 19 states that "[a]ny person proposing the modification of an existing facility, which will increase the facility's potential emissions of any one regulated pollutant by the amounts specified below . . . (4) [v]olatile organic compounds in excess of either three pounds per hour or 15 pounds per day . . . , but which does not have the potential to emit 25 tons per year or more of the regulated pollutant shall comply with the requirements set forth in Section 3 of this regulation."

17. Section 3 of APC 19 provides that "[n]o person required by Sections 2(c) or (d) of this regulation to comply with this section shall commence construction, modification, reconstruction or operation of a facility . . . without registering the same with the Board."

18. APC 19, Section 4(a), states that no person required by Section 2(b) of APC 19 to comply with Section 4 shall commence

construction, modification or reconstruction of any facility without first applying for and obtaining a construction permit.

19. APC 19, Section 4(b)(4), states that any person proposing the construction, modification or reconstruction of a major facility in an ozone nonattainment area must comply with the lowest achievable emission rate (LAER) for VOCs, and comply with the applicable portions of APC 19, Section 8, concerning "Emissions Offsets."

20. APC 19, Section 5, states that no person shall operate any facility which has the potential to emit 25 tons or more per year of any one regulated pollutant without first applying for and obtaining an operating permit.

21. On November 6, 1991, U.S. EPA classified Marion County as nonattainment for ozone. 56 Fed. Reg. 56753 (November 6, 1991).

22. On December 6, 1994, U.S. EPA approved Indiana SIP Rule 326 IAC 2, containing requirements for new or modified major stationary sources or major modifications constructed in nonattainment areas, as part of the federally enforceable SIP for Indiana. 59 Fed. Reg. 51108 (December 6, 1994). This rule replaced APC 19.

23. 326 IAC Section 2-1 sets forth the operating and permitting requirements for sources constructing or making

modifications with potential emissions of 25 tons per year or more of a regulated pollutant.

24. 26 IAC 2-1-3(a) governs construction permits and requires that no person shall commence construction or modification of any source or facility without first applying for and obtaining a construction permit from the commissioner.

25. 326 IAC 2-1-4(a) governs operating permits and requires that no person shall operate any source or facility without first applying for and obtaining a permit to operate said source or facility from the commissioner.

26. 326 Section 2-2 sets forth the registration permitting requirements for construction or modification with potential emissions of less than 25 tons per year, but with VOC emissions of greater than 3 pounds per hour or 15 pounds per day.

27. 326 Section 2-1(a) states that no person with potential emissions of less than 25 tons per year, but with VOC emissions of greater than 3 pounds per hour or 15 pounds per day, shall commence construction, operation or modification of any source or facility without registering with the commissioner.

28. 326 IAC Section 2-3 sets forth the "Emission Offset" requirements for new and modified stationary sources in nonattainment areas.

29. 326 IAC 2-3-3(a)(2) provides that prior to the issuance of a construction permit, the applicant must apply emission

limitation devices or techniques to the proposed construction or modification such that it achieves LAER for the applicable pollutant.

30. 326 IAC 2-3-3(a)(5) requires that emissions resulting from the proposed construction or modification be offset by a reduction in actual emissions of the same pollutant from an existing source or combination of existing sources.

31. 326 IAC 2-3-3(a)(6) states that the applicant must obtain the necessary preconstruction approvals and must meet all the permit requirements specified in Indiana SIP rule 326 IAC 2-1.

32. On February 10, 1986, U.S. EPA approved Indiana SIP Rule 326 IAC 8, containing requirements for sources VOC emissions, as part of the federally enforceable SIP for Indiana. 51 Fed. Reg. 4912 (February 10, 1986).

33. 326 IAC 8-1-6 states that "new facilities (as of January 1, 1980), which have potential emissions of 22.7 megagrams (25 tons) or more per year, located anywhere in the state, which are not otherwise regulated by other provisions of this article (326 IAC 8), shall reduce VOC emissions using best available control technology (BACT)."

34. On November 30, 1994, U.S. EPA classified Marion County as attainment for ozone. 59 Fed. Reg. 54391 (November 30, 1994).

35. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations of the Act that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations of the Act that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004).

36. The Administrator may assess a penalty greater than \$220,000 where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty is appropriate for an administrative penalty action. 42 U.S.C. § 7413(d)(1) and 40 C.F.R. Part 19 (2004).

37. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving a penalty greater than \$220,000 is appropriate for an administrative penalty action.

38. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a

longer period of violation is appropriate for an administrative penalty action.

39. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations

40. International, through its subsidiary Indianapolis Casting Corporation, owns and operates a grey iron foundry, located at 5565 Brookville Road, Indianapolis, Indiana (the facility). Cold box core machines are used to make cores for the molding process at the grey iron foundry. The cold box core machine process uses an amine catalyst, triethylamine (TEA), which is a hazardous air pollutant and a VOC.

41. The facility is located in Marion County, which is currently non-attainment for the 8-hour ozone standard, but has been designated as an attainment area for ozone for the 1-hour standard. At certain times relevant to this CAFO, Marion County was designated non-attainment for the 1-hour ozone standard.

42. The facility is a "major stationary source" as that term is defined at 40 C.F.R. § 52.24(f)(4)(i)(a).

43. Between 1977 and 1995, International installed a total of 13 cold box core machines at the Facility to make cores in the foundry molding process.

44. In 1979, International installed two cold box core machines, identified as N and S cold box core machines, which each have the potential to emit 19.20 TPY of uncontrolled VOC (TEA gas) emissions.

45. In 1989, International installed four cold box core machines, identified as 5050#1, 5050#2, 4040#5 and 4040#6, which have the potential to emit 38.39, 38.39, 19.97 and 19.97 TPY, respectively, of uncontrolled VOC (TEA gas) emissions.

46. In 1991, International installed two cold box core machines, identified as 4040#3 and 4040#4, which have the potential to emit 33.32 and 33.75 TPY, respectively, of uncontrolled VOC (TEA gas) emissions.

47. On December 19, 2003, U.S. EPA issued a Notice of Violation to International alleging that International violated the New Source Review nonattainment provisions of the Act, 42 U.S.C. § 7501 - 7515, and the Indiana State Implementation Plan.

48. On February 11, 2004, representatives of International and U.S. EPA discussed the December 19, 2003 notice of violation.

Violations

49. The VOC emissions from the cold box core machines at the Facility are subject to the regulations for new and modified major stationary sources in nonattainment areas set forth in 40 C.F.R. § 52.24 and the Indiana SIP at APC 19 and 326 IAC 2.

50. In 1979, International made major modifications to a major stationary source when it installed two cold box core machines, in a nonattainment area, in violation of the construction ban in 40 C.F.R. § 52.24(a).

51. In 1989, International installed four cold box core machines without obtaining construction and operating permits and without complying with the LAER and emission offset requirements, in violation of 40 C.F.R. § 52.24(a), APC 19, Section 2 and 326 IAC 2.

52. In 1991, International installed two cold box core machines without obtaining construction and operating permits and without complying with the LAER and emission offset requirements, in violation of APC 19, Section 2 and 326 IAC 2.

Civil Penalty

53. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and the cooperation, prompt return to compliance, and agreement to perform a Supplemental Environmental Project (SEP) by International, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$445,960.

54. International must pay the \$445,960 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," on or before November 15, 2005.

55. International must send the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

56. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Cynthia A. King, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

57. This civil penalty is not deductible for federal tax purposes.

58. If International does not pay timely the civil penalty, or any stipulated penalties due under paragraph 70, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action

under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

59. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. International will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. International will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Supplemental Environmental Project

60. International must complete a supplemental environmental project (SEP) designed to protect the environment and the public health by reducing emissions from city buses in Indianapolis, Indiana.

61. Within 30 days of the effective date of this CAFO, International will enter into an agreement with the City of Indianapolis for the purchase and installation of, at least, 139 U.S. EPA verified diesel oxidation catalysts(DOCs)for the City of Indianapolis city bus fleet. The agreement will include a requirement to complete the purchase and installation of the U.S.

EPA verified DOCs within 1 year of the effective date of this CAFO.

62. International must spend, within one year from the date that this CAFO is effective, the sum of \$145,000 for the purchase of at least 139 U.S. EPA verified DOCs for the City of Indianapolis city bus fleet.

63. International certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. International further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

64. International must obtain and maintain copies of the underlying research and data for all reports submitted to U.S. EPA according to this CAFO. International must provide the documentation of any underlying research and data to U.S. EPA within seven days of U.S. EPA's request for the information.

65. International must submit a SEP completion report to U.S. EPA within 90 days of the completion of the SEP. This report must contain the following information:

- a. detailed description of the SEP as completed;
- b. description of any operating problems and the actions taken to correct the problems;
- c. itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or cancelled checks that specifically

identify and itemize the individual costs of the goods and services;

d. certification that the SEP has been completed in compliance with this CAFO; and

e. description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

66. International must submit all notices and reports required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

67. In each report that International submits as provided by this CAFO, International must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

68. Following receipt of the SEP completion report described in paragraph 65 above, U.S. EPA must notify International in writing that:

a. It has satisfactorily completed the SEP and the SEP report;

b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give International 30 days to correct the deficiencies; or

c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 70.

69. If U.S. EPA exercises option b. above, International may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of International's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give International a written decision on its objection. International will comply with any requirements that U.S. EPA imposes in its decision. If International does not complete the SEP as required by U.S. EPA's decision, International will pay stipulated penalties to the United States under paragraph 70 below.

70. If International violates any requirement of this CAFO relating to the SEP, International must pay stipulated penalties to the United States as follows:

a. If Respondent completes the SEP, but spends less on the SEP than the amount set forth in paragraph 62, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 62.

b. If Respondent has completed the SEP but the SEP is not satisfactory, Respondent must pay \$14,500 in addition to any penalty required under subparagraph 70.a, above.

c. If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$29,000 in addition to any penalty required under subparagraph

70.a, above. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.

d. If Respondent fails to comply with the schedule in paragraph 61, above, for implementing the SEP, fails to submit timely the SEP completion report required by paragraph 65, above, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 st through 14 th day
\$200	15 th through 30 th day
\$300	31 st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

71. U.S. EPA's determinations of whether International satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will bind International.

72. International must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. International will use the method of payment specified in paragraphs 55 and 56, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

73. Any public statement that International makes referring to the SEP must include the following language, "International undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against International for violations of the Clean Air Act."

74. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

a. International must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), International's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. International must take all reasonable actions to avoid or minimize any delay. If International fails to notify U.S. EPA according to this paragraph, International will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of International caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If U.S. EPA does not agree that circumstances beyond the control of International caused or may cause a delay in completing the SEP, U.S. EPA will notify International in writing of its decision and any delays in completing the SEP will not be excused.

d. International has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

75. International agrees that it may not deduct the cost of the SEP from its taxes.

Final Statement

76. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Violations section of this CAFO.

77. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

78. This CAFO does not affect International's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 76 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

79. International certifies, to the best of its knowledge, that it is complying fully with the New Source Review requirements at the facility.

80. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine International's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

81. The terms of this CAFO bind International, and its successors, and assigns.

82. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

83. Each party agrees to bear its own costs and attorneys' fees in this action.

84. This CAFO constitutes the entire agreement between the parties.

85. This CAFO is effective upon the date of filing with the Regional Hearing Clerk.

U.S. Environmental Protection Agency, Complainant

9/28/05
Date

Stephen Rothblatt
Stephen Rothblatt, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

Indianapolis Casting Corporation, a wholly-owned subsidiary of
International Truck and Engine Corporation, Respondent

9/22/05
Date

James L. Ryter
Plant Manager
Indianapolis Casting Corporation

CAA-05- 2005 - 0059
[Signature]

CONSENT AGREEMENT AND FINAL ORDER

**Indianapolis Casting Corporation, a wholly-owned
subsidiary of International Truck and Engine Corporation**
Docket No. **CAA-05- 2005-0059** *SDW*

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

9-29-05

Thomas V. Skinner

Thomas V. Skinner
Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

CERTIFICATE OF MAILING

I, Shanee Rucker, certify that I sent the Consent Agreement
and Final Order, EPA Docket No. CAA-05-2005-0059, by Certified Mail,
Return Receipt Requested, to: *HRW*

Mr. Howard Miller
Indianapolis Casting Corporation
5565 Brookville Road
Indianapolis, Indiana 46219

David A. Piech
International Truck and Engine Corporation
4201 Winfield Road
P.O. Box 1488
Warrenville, IL 60555

U.S. DEPARTMENT OF JUSTICE
PROTECTIVE DIVISION
REGION V

05 SEP 29 P3.06

REG-1

on the 29th day of September 2005.

Shanee Rucker
Shanee Rucker, Secretary
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 70010320000590256534